

DRAFT

Governor's Blue Ribbon Water Task Force Meeting Notes

**February 22-23, 2006
Albuquerque**

Attendees: Larry Blair, Conci Bokum, Brian Burnett, Frank Chaves, John D'Antonio, Kyle Harwood, Lisa Henne, Eileen Grevey Hillson, Howard Hutchinson, Sarah Kotchian, Elmer Lincoln, Estevan Lopez, Paul Paryski, and Elmer Salazar.

Task Force Activities and Effectiveness

Task Force members discussed ways in which the group could enhance its effectiveness in the future. Specific issues that were raised included the need to update the Task Force membership, the need for resources to prepare reports or perform other work (particularly if LANL does not continue to provide support), and the need for feedback from Governor Richardson on Task Force recommendations.

Elmer Lincoln commented that even though the Task Force has limited interaction with Governor Richardson, it does have influence with state water managers (e.g. the state engineer). Elmer added in reference to Paul Paryski's idea for a state water policy board that it is worth considering how the Task Force could contribute to better integration of water resources in the state.

Frank Chaves commented that he had a lot of questions about the objectives and role of the Task Force early on in his involvement, but the Task Force has consistently maintained the state water plan as a focal point. Frank also commented that the tribes are very concerned with water, and the Task Force's involvement with the Navajo Settlement was consistent with the state water plan and a positive contribution. He added that looking for ways to restart the flow of federal funding could be an important contribution for the Task Force. Frank also suggested that using the New Mexico First town hall structure might help the state develop a comprehensive priority for water projects.

Kyle Harwood mentioned that many of the Task Force's priorities that were included in Mimi Stewart's bill died in the first week of the legislative session, and suggested that the Task Force might want to start having teleconferences to help people who are not able to travel to be included in the meetings.

Howard Hutchinson commented that the Task Force has had very good communication with John D'Antonio and Bill Hume, and these individuals are the Task Force's primary conduit to Governor Richardson. Howard mentioned the proposed domestic well regulations and the bill containing Task Force priorities as examples of how the Task

Force has been effective. He added that participation on the Task Force is extremely valuable for him and probably for others as well.

Brian Burnett asked whether any of the other members wanted to serve as chair for the coming year. Task Force members responded with a vote of confidence and appreciation for Brian's contribution, and requested that he continue as chair.

Kyle Harwood asked whether there is something that the Task Force should be doing in the next 60-90 days related to the drought and extremely dry conditions this year, but that does not duplicate efforts made by other entities. Elmer Salazar suggested having the Water Task Force meet with the Drought Task Force to exchange information on activities and focus areas. Frank Chaves added that it might make sense to focus on the regions where shortage sharing is likely to come into effect.

Frank Chaves commented that the Task Force might be of service to Governor Richardson by helping him to prepare for addressing the wildfire and water issues. These issues are likely to be highly visible this year due to the extremely low precipitation. Frank added that having a coordinated response to the likely disasters is going to be important.

Task Force members requested that Lisa invite Butch Blazer and Anne Watkins to the next meeting to talk about the types of planning and preparation that is being done for the fire season.

Reports from the Regions

Elmer Lincoln reported that the Farmington area has had a little bit of precipitation, and lake levels are not declining. Elmer added that shortage sharing agreements have been agreed to, but a few parties still need to sign. These agreements are important because they cause everyone to cooperate. Elmer also reported that adjudications are very active in his area.

Kyle Harwood commented that two dry years in a row could create a real problem, but that most of the upper system reservoirs are doing pretty well in spite of the lack of precipitation. Kyle also reported that the City of Santa Fe's long range water supply plan came out a couple of weeks ago, and the water conservation plan was adopted by the City Council in December.

Paul Paryski reported that he is moving ahead on the ordinances (rooftop harvesting, non-toxic asphalt sealer, etc.) with the City of Santa Fe, and mentioned that the NMED will approve the use of rooftop water for toilets. Paul also informed Task Force members that River Network is supporting a new inter-tribal water issues organization called the Indigenous Waters Network.

Elmer Salazar asked whether any communities are under water restrictions yet. Task Force members responded that Las Vegas has restrictions, and Albuquerque is evaluating

what to do. Kyle Harwood commented that drought surcharges maintain utility revenues important for bonding, in addition to encouraging conservation.

Brian Burnett reported that construction on Albuquerque's diversion project is moving along. The \$365 million cost was paid for by seven years of rate increases and bonding. The diversion project is integral to city meeting its arsenic standards. The city is now working on addressing taste issues with the new water source.

Elmer Salazar reported that the acequias are starting to plan their shortage sharing agreements. The acequias have significant concerns about protecting senior water rights. Elmer also reported that the Forest Service has told ranchers not to plan on grazing cattle in the high country until June. As a result, people are starting to sell off their cattle, and hay prices will go up. Elmer commented that in his area, people are going back to the old ways of sitting down and talking about issues to work them out among themselves rather than using lawyers.

Elmer also commented that people in his area are worried about the effect of low water on nitrate levels, since there will be no water to flush out the groundwater. There has been no concentrated effort to test wells on a regular schedule.

Kyle commented that the City of Santa Fe made a list internally of all of the water policy actions that came out in 2002 as a result of that drought year. As examples, Kyle mentioned a resolution that prohibited city water connections out of city limits, hiring of consultants to get the Buckman direct diversion, leasing of water from the Jicarilla, the negotiation of a City-County water utility agreement, water conservation rules, the toilet retrofit program, and the \$1M experience in litigating Las Campanas. These actions resulted in a 25% reduction in the water delivery to customers, despite an increase in users. Kyle added that he is interested in following what types of policies and actions the 2006 drought will bring, for example, new shortage sharing agreements.

Howard Hutchinson reported that there was a meeting of the regional working group of all of the political subdivisions in his area to finalize a Memorandum of Agreement among the State, Fish and Wildlife, the Bureau of Reclamation, and the 17 political subdivisions. The group also finalized the Joint Powers Agreement (JPA) to form a Gila-San Francisco water commission. The JPA was modeled on the San Juan JPA. The group will be looking at what would happen if they took water out of the San Francisco. Howard commented that people in his area are taking drought in stride because they have lived with drought for generations. There is a fear that they will lost most of the Gila to fire this year. All of the extra fire crews have been moved to Arizona, which will make the situation worse. There has been talk about outsourcing the fire fighting. Howard added that for his this area, the 1987-1993 time period was important for water planning, and many of these plans are still in place and can be activated.

Howard also mentioned that they have been doing intensive studies of geohydrology related to drought, and the declines in the river that are occurring now did not occur in the 1950s drought. Conci Bokum asked whether the difference could be due to increased population and pumping. Howard replied that there is actually a decreased population.

Elmer Salazar suggested that there might be more trees now than then. Howard stated that the value of these studies is that they show that the recharge assumptions in their regional water plan were too high and suggest that there is more water available than there really is. Howard informed Task Force members that the MOU group is putting on a science forum public meeting and tour on April 17-19, and offered to provide more information to anyone who is interested.

Howard also commented that the State Engineer has decided that he will accept filings for water rights on stock tanks. There was a suit filed against the State Engineer by someone from Albuquerque for additional water in that area. Stock tanks are primarily on Forest Service land and predate the 1964 adjudication, so the water was taken into consideration during the adjudication. Elmer Salazar asked how an individual could claim a water right on forest service land. Howard responded that the claim is that the Forest Service had a taking of their land and livestock operation. The outcome of this case could have huge implications for cattle industry and could affect land grants as well. The case is to be decided based on territorial law rather than current water law. Elmer Salazar commented that it might be useful to have someone come give a detailed presentation on this case. Dan Bryant was suggested as a possible presenter.

Larry Blair informed Task Force members that John Schumaker and Lee Brown are organizing a legal seminar on the marketability of water in early May.

Lisa Henne reported that she has been teaching a watersheds course for seven environment department employees from Santa Clara, San Ildefonso, and Jemez Pueblos. Los Alamos National Laboratory has an agreement with the Accord Pueblos (San Ildefonso, Santa Clara, Jemez and Cochiti Pueblos) to teach courses on environmental monitoring for a certificate program that is offered through Northern New Mexico College. Lisa added that her course emphasizes basic hydrology, aquatic ecology, and human impacts in watersheds.

Proposed Domestic Well Rules and Regulations

Conci Bokum gave an update on the hearings to date for the proposed domestic well regulations. Conci reported that there had been three meetings so far. The first meeting was in Santa Fe, and was well-attended because of the legislative session. Conci commented that the State Engineer's staff did a great job presenting the bill and the issue. The presentation included the history and content of the rules and regulations. At this first meeting, the well driller representatives were the only constituents who were overtly negative. Many people had questions about the provisions. The second meeting was in Raton, and according to Conci's sources, there were many anti-government sentiments expressed. The OSE made it clear that they had a lot of other priorities. Once they had convinced people of this, people began complaining that the regulations were not strong enough. The third meeting was in Las Cruces, but Conci did not have any information about it.

Conci also reported that the home builders are not opposing the regulations. The Realtors Association of New Mexico is opposed and lobbied at the legislature, but did not send

representatives to attend the public meetings. Howard Hutchinson mentioned that he had talked to Jack Westman during legislative session, and Jack said that he was going to try to convince the board that these regulations are probably in everyone's best interest.

Howard Hutchinson commented that the only thing that he had questions about in the proposed regulations was the fee structure. Conci responded that in the presentation, it was explained that fees in other states cost even more, and applications cost quite a bit to process.

Conci raised her concerns that the regulations do not give equal protection for all senior water rights because they apply only to stream-connected aquifers. Conci added that the expedited transfer language is also of concern to her because it removes opportunities for public comment for some transfers. Conci also commented that the Active Water Resources Management regulations went through three iterations of review and revision, and that these regulations could also be significantly revised based on public input.

Howard Hutchinson commented that on page 2, under D, he would like to see the statute restated it clear what the domestic use is. Howard also commented that the expedited transfer provision does not negate a person's right to go through a more lengthy process to request a transfer of more water as long as it can be put it to beneficial use. Howard added that the Gila area has already experienced this type of scenario and it has worked out well and protected senior water rights.

Speakers and Topics for the Coming Year

The Task Force will visit the Middle Rio Grande Conservancy District in May. Lisa Henne will coordinate with Jack Westman to set up the visit. The Task Force might take another trip later in the year, but the location has not been determined.

Task Force members commented that they would like to have more frequent updates on the progress of the Navajo Settlement, including guest speakers that can provide new details about the status of the agreement.

Members also commented that the Task Force needs to better articulate the link between Task Force activities and the State Water Plan. It was also suggested that the Task Force ask John D'Antonio and Estevan Lincoln frame their reports to be more in alignment with the Task Force's annual report and recommendations.

Sarah Kotchian suggested that the Task Force follow through on work to encourage state universities (e.g. NMSU) to respond to information gaps and local needs related to water conservation technologies. This encouragement should include a letter from the Task Force to NMSU. Conci Bokum suggested that the Task Force might be able to bring the issue to the attention of the interim committee on water and natural resources.

Other suggested topics and presentations included:

- Water transfers from agricultural to commercial/industrial use;

- Water banking and water rights;
- Endangered Species Act impacts on water management;
- Invite members of the Drought Task Force and Butch Blazer to talk about what are they doing to plan for the fire season;
- Learn about governance of mutual domestics (Anne Watkins), particularly as related to maintenance and operations, and explore what the Task Force could contribute to this issue.
- Presentation from chair of ESA Collaborative Working Group;
- Federal funding initiatives.

Bill Hume updated Task Force members with on the water innovation fund project reviews. Bill stated that there have been two rounds of funding to provide seed money for innovative water use or reuse projects. The first round funded 20-30 projects, and another 12 or so were funded on the second round. The projects vary widely.

Bill suggested that the Task Force take 60-90 minutes at each meeting to listen to presentations on the projects and try to assess results. He explained that some of the projects will not be far enough along to be analyzed, some were never executed, and others are completed. The goal of the project review is to provide feedback on how well the project fund is functioning to promote water innovation in the state.

Elmer Salazar commented that in the past, some of the Task Force members were involved in evaluating the project proposals, and suggested that it might be useful to have Task Force input in the selection process as well as the evaluation process.

Brian Burnett asked whether there is a set of requirements for accountability. Bill responded that there are no requirements for accountability, but a report to show that the contract has been fulfilled is required.

Sarah Kotchian suggested inviting people who have expertise in technical innovation to the presentations so that they can evaluate the economic opportunities associated with these projects. Sarah also suggested that the Task Force's analysis should include an understanding of what resources in addition to the innovation funding were necessary to carry out the projects, what the ingredients for or barriers to success were, and metrics used by the funding recipients to measure success.

Review of Legislative Session and Funding Issues

Bill Hume reported that if the State Engineer certifies by July 1, 2007 that settlement agreements have been reached in the Taos and Navajo cases, the state will make available \$20M for Taos and \$30M for Navajo to match federal dollars. For the Pecos settlement, if the State Engineer certifies by July 1, 2007 that the \$9M has been spent, the state will

when provide \$4.5 in additional funding. When the State Engineer certifies that the \$4.5M has been spent, the state will provide an additional \$4.5M.

Bill also reported that there might have been a legislative error in the contingency funding (HB622) that could affect funding for the Pecos and Navajo settlements. There is a good chance that the \$75M for Indian Water Rights funding could get vetoed, as it is competing with funding for education because of the legislative mistake. The state needs to show the federal government that it is committed to paying its portion of the settlements, and that the settlement funding has been earmarked.

Paul Paryski commented that the money for phreatophyte control that did not have appropriate language requiring monitoring. Paul asserted that the bill needs to have monitoring requirements added back in or it should receive a line item veto. Bill Hume commented that the phreatophyte control funding goes to the Soil and Water Conservation Districts, which have set up baseline monitoring. Estevan added that there has been an emphasis on monitoring of the effectiveness of phreatophyte control. Howard commented that developing the monitoring protocols and installing the monitoring equipment is only part of what needs to be done to evaluate these projects – time will also be needed, as it will take several growing seasons to get reliable results. Bill concurred that it is similar to cloud seeding in that it is very difficult to isolate the effect of one treatment.

Estevan Lopez commented that it appeared that the OSE/ISC did well with getting almost of the remaining term to perm positions approved. Estevan added that the request for funding that would allow the OSE/ISC to participate in ESA and NEPA litigation if needed received a recommendation of \$1.5M rather than the requested \$2.7M. There was no recommendation on a request to cost share \$2.5M for the Middle Rio Grande Endangered Species Act (MRGESA) Collaborative Program to leverage about \$9M in federal funds, nor was a request funded for \$1M for ESA issues on the Pecos. Estevan added that the OSE/ISC had gotten feedback from legislators that NEPA and ESA funding is perceived as going to a “black hole”. Estevan explained that the MRGESA Collaborative Program is focused on trying to ensure compliance with the biological opinion for the silvery minnow and southwestern willow flycatcher. He emphasized to the Task Force that the OSE/ISC has to be engaged in those efforts or risk federal takeover of waters and water management.

Eileen Grevey Hillson commented that for the MRGESA Collaborative Program, many of the stakeholders (other than the environmental community) have a lobbying problem and did not speak in behalf of the program at the legislative session. Estevan agreed with Eileen’s comment, and added that the business community is not that involved anymore, nor did environmental groups lobby for it.

Frank Chaves commented that early on in habitat restoration efforts, the pueblos were heavily involved in funding for the MRGESA Collaborative Project. Over time, the pueblos became concerned over what the end goal was. This difference in overall goals resulted in a parting of approaches and ways. Estevan responded that there is somewhat

of a disconnect because there are so many efforts going on, and added that Senator Dominici wants to develop a river master plan to try to coordinate efforts.

John D'Antonio commented that the OSE/ISC has to work continually with legislators to explain the importance of particular projects and avoid the perception that there is no end to the money that will be needed for them. For example, on the Pecos, ESA issues could be open-ended and ongoing in the absence of motivation to find a solution. The state stands to benefit from management approaches that are aimed at recovery and delisting, and therefore should be involved in figuring out solutions. John added that ESA issues involve state-based water rights that the federal agencies are going to be getting involved with, and the state needs to be at the table.

As an example, John commented that meeting the standards of the biological opinion for silvery minnow could be very difficult by early 2007. It is important that the state meet Department of Interior staff to talk about reducing some of the standards for the fish, but the OSE does not have funding available to work on this issue. The OSE agency functions have expanded significantly without commensurate increases in funding. This is the case with many government services – the funding stream has remained flat but the services have expanded as the state has grown. If not addressed, this situation will end up hurting smart growth and sustainability.

Estevan also reported that the \$665K that was requested for water planning did not get funded and would have to be pulled from the budget. There are two regional water plans left to finish, and some need updates. In addition, the state water plan needs to be revised by the end of 2008. The OSE/ISC will have to figure out how to fund those activities.

Howard Hutchinson commented that the lack of mention of water in the governor's speech sent a message that water is not a priority. John D'Antonio responded that the governor wanted to focus on education and other priorities related to the Year of the Child. There was interest in water in the legislation, but other priorities took precedence.

In reference to getting funding for the state to participate in NEPA and ESA processes, Howard Hutchinson mentioned that the Coalition of Counties is going to offer a workshop aimed at helping stakeholders develop the science and the ability to participate effectively in these processes. Speakers at the workshop will give an overview of the kinds of university resources that are available for counties to draw on. The workshop is scheduled for March 18th in Las Cruces.

Howard also commented that he thought that people had done a very good job of making legislators aware of importance of water, and the session results are a product of the community demands for other projects and funding. Frank Chaves mentioned a New Mexico First Town Hall on federal funding that emphasized regionalizing projects and funding to help bring in federal dollars. John D'Antonio agreed that there is money going to water and wastewater projects. However, the money is channeled through the OSE and is not used by the agency.

Raising Awareness and Support for Water Issues

Conci Bokum suggested that the Task Force discuss the Water Trust Fund Resolution and strategies for raising the visibility of water in the state at the next meeting. For example, how can Task Force members reach out to their respective communities to help to build momentum over the coming year? John D'Antonio responded a securing recurring revenue stream for water will be critical.

Frank Chaves commented that if making the Water Trust Fund part of the permanent fund is part of the state water plan, the Task Force might want to focus on that issue. Part of the effort of the Task Force could be identify stakeholders and how their interests would be served by making the Water Trust Fund part of the permanent fund, and start a campaign to get support for it. John D'Antonio commented that making it a permanent fund would mean the interest that is generated could be bonded against. With the current situation, the interest can be used but cannot be bonded against because it is not a protected fund.

Howard Hutchinson suggested that the Task Force could craft a resolution that could be included in an editorial piece that explains why the Governor's Blue Ribbon Water Task Force supports this constitutional amendment. Howard added that it might be advantageous to go to editorial boards to try to garner their support as we near the election cycle.

Conci Bokum suggested that a New Mexico First Town Hall might be an effective way to elevate the visibility of water for the coming year. Conci also suggested promoting the idea of having a "Year of Water" next year.

Howard Hutchinson reiterated that much of the pressure in the last session to allocate funding to issues other than water came from local governments, and suggested inviting local government representatives to a Task Force meeting to discuss the importance and relevance of water issues to them. Task Force members agreed to use part of the March meeting to plan for inviting these representatives to the April meeting.

Howard also suggested that the Task Force provide a list of priorities to the chair of the Water and Natural Resources Committee. If any of those priorities are included in the agenda for the committee, Task Force members could provide testimony.

Brian Burnett commented that another approach would be for Task Force members to be more proactive about being available to give talks. Brian added that within the business community, understanding of water is lagging behind other issues, and he has been trying to help the business community understand that they do not need to leave the science to experts. Larry Blair commented that in many cases, technicians have made water issues unnecessarily difficult to understand.

Task Force members suggested inviting Mike Conner and/or Nick Gentry to come to a meeting to talk about how the process of water rights settlements works in congress.

Task Force members discussed and drafted a letter to the governor requesting support for specific bills (appended to meeting notes). The letter will be reviewed by John D'Antonio and Estevan Lopez, and then sent to Bill Hume to forward to Governor Richardson.

Appendix: Email Letter to Governor Richardson:

Dear Governor Richardson,

The Governor's Blue Ribbon Water Task Force requests your support for the legislation listed below. This legislation is consistent with the State Water Plan that you have so strongly endorsed and promoted since taking office, and with the priorities that the Task Force has established and promoted around the state. As you know, this year's drought conditions are reaching extreme proportions, and support for major water initiatives is now critical for ensuring that New Mexico manages its water resources in an effective and efficient manner.

This legislation also supports the commitment you have made to future generations of New Mexicans through your "Year of the Child" initiative. Sustainable management of our water resources is an essential ingredient in your vision for a prosperous and healthy future for New Mexico. The Governor's Blue Ribbon Water Task Force will work in the coming year to raise awareness of the importance of water to our future and to help you make water a priority for the next legislative session.

Sincerely,

Brian Burnett, Chair

Governor's Blue Ribbon Task Force Recommendations for 2006 Legislation:

HB 2 General Appropriation Act of 2006

Section 12. Fund Transfers

Item B. Water Trust Fund

HB 633 Pecos River Basin Land Management Fund

HB 683 Water Project Finance Authorization

HB792 Interstate Water Project Financing

HTRC CS/HB622

Section 10. Wildfire Protection Project

Section 11. Severance Tax Bonds

Item 8: Pecos River Compact

Section 42. General Fund

Item 15: Planning and construction of a pilot channel in Elephant Butte

Item 18: Strategic Water Reserve

Section 77. Contingent Appropriations to the Indian Water Rights Settlement Fund

Section 78. Contingent Appropriations for the Pecos River Compact Settlement